

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9289 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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PADMAVATIBEN W/O KAMLESHKUMAR DEVANDAS LAKHANI

Versus

KAMLESHKUMAR DEVANDAS LAKHANI  
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Appearance:

1. Criminal Misc.Application No. 9289 of 2002  
MR SUNIL S JOSHI for Petitioner No. 1  
MR UA TRIVEDI for Respondent No. 1-4  
MR PR ABICHANDANI, APP for Respondent No. 5
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/05/2003

C.A.V. JUDGEMENT

Heard the learned counsel for the respective parties.

2. The present petition is filed by the petitioner original complainant for transferring the Criminal Case No.3763 of 2001 from the court of Metropolitan Magistrate, Court No.17, Ahmedabad to the Court of learned Judicial Magistrate (F.C.), Dahod.

3. Learned counsel for the petitioner has submitted that the petitioner is a lady and there is matrimonial dispute between the parties and at present, the petitioner is residing at her parental house at Dahod and the petitioner had lodged the complaint against the respondents accused at Dahod, but as the incident in question had taken place at Ahmedabad, officials at the Dahod Police Station, after registering the complaint, transferred the said complaint to the Sardar Nagar Police Station, Ahmedabad. It is further submitted that investigation of the case is over and chargesheet is submitted against the respondents accused and it is pending before the Metropolitan Magistrate, Court No.17, Ahmedabad for trial in which the petitioner being complainant and other witnesses have to remain before the court at Ahmedabad on every adjournment. If the petitioner fails to remain present, the court issues warrant against her. For attending Court, petitioner has to travel by bus from Dahod to Ahmedabad for which the petitioner has to rush early in the morning at the bus station and in case she fails to get the bus, the court issues warrant against her and such type of warrant has been issued by the court. He has further submitted that petitioner being a lady, attending Court at Ahmedabad from Dahod causes hardship and inconvenience and at the same time, it is expensive also while the respondents are well settled persons and doing wholesale business of grocery in Ahmedabad.

He has also relied upon the decision of the Apex Court, reported in A.I.R. 2000 S.C. 3406(1), wherein the Apex Court transferred the case of lady keeping in mind the fact that divorce petition was filed by the husband at Bombay whereas the wife was residing at Jaipur with her child and it was difficult for the wife to contest the proceedings pending in the Court at Bombay.

He has also relied upon the decisions of the Apex Court reported in 1988 Cri.L.J. 1581, wherein the case was transferred by the Allahabad High Court on the ground that the court within whose jurisdiction wife resided with her father had jurisdiction to try the offence as

the offence was partly committed outside the court's jurisdiction, when she was maltreated and continued to be committed within court's jurisdiction where she had been left with her father.

He has also relied upon the decision of the Apex Court reported in 2001 A.I.R. SCW 4587, head note of which is as under;-

"Criminal P.C. (2 of 1974), S. 179 - Territorial jurisdiction Court within whose jurisdiction consequence has ensued Allegations that wife was subjected to physical torture when she was in family way and she had to be taken back to her parental house at place "J" Consequence of beating i.e. miscarriage took place at place "J" - Court at Place "J" has jurisdiction to try offence Quashment of charge solely on ground that since act alleged against accused took place at place "I" where couple resided after marriage, the Courts at place "J" acquire no jurisdiction - Illegal."

Submitting accordingly he has prayed to transfer the criminal case in question from the Court at Ahmedabad to Dahod.

4. On the other hand, learned counsel for the respondent Nos.1 to 4 - original accused has mainly argued that the respondent - Nos.3 and 4 are ladies. In the criminal case in question, presence of the petitioner being complainant on each and every adjournment before the concerned court at Ahmedabad is not necessary, but her presence is required only for recording her oral evidence. It is contended that when the case in question was kept for recording the evidence of the petitioner on 6/8/2002, the petitioner sought adjournment and hence the matter was adjourned. Thereafter also, time and again applications for adjournment was made and matter was being adjourned. Therefore, it is contended that petitioner is not interested to proceed further with the matter and is not giving cooperation in disposing of the criminal case in question and almost on all adjournments, the respondents being original accused have to remain present before court on account of the act of the petitioner. It is submitted that the criminal case is pending at the stage of recording her evidence and the court is ready to record the evidence of the petitioner and awaiting for presence of the petitioner for recording her evidence, but the petitioner does not want to enter into witness box and finalize the criminal case in

question. It is submitted that the petitioner is interested in delaying the case in question and instead of appearing before the concerned court and giving her oral evidence, the petitioner has filed the present petition with a view to harass the respondent Nos.1 to 4 - original accused. It is further submitted that the petitioner has falsely involved all the family members including the petitioner Nos.3 and 4 though ladies and merely because the petitioner is a lady and attendance of court at Ahmedabad from Dahod causes inconvenience to the petitioner, the case in question cannot be transferred at Ahmedabad. It is submitted the respondent Nos.3 and 4 are also ladies and they are also facing the same problems.

5. In this matter, this Court (Coram : D.H. Waghela, J.) has issued rule making it returnable on 11/2/2003, vide order dtd.21/1/2003. The respondents have filed their reply against which, the petitioner has filed rejoinder.

6. Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that the petitioner has prayed for transfer of criminal case in question on the ground of the petitioner being a lady and attendance of criminal case in question from Dahod to at Ahmedabad causes inconvenience and hardship and expensive. It is to be noted that the respondent Nos.3 and 4 also ladies and, therefore if the case in question is transferred, they will have to suffer the same problem. Further, the criminal case in question is pending for recording the oral evidence of the petitioner and other witnesses since 20/2/2002 and from that date, the case has been adjourned several times at the request of the petitioner. It appears that the petitioner is avoiding her statement being recorded as result of which, the respondents-original accused have to remain present before the concerned court. Furthermore, presence of the petitioner being complainant is not necessary on each and every adjournment. Her presence is required only for recording her statement, but instead of giving cooperation, she is seeking adjournments.

7. So far as the decision of AIR 2000 S.C. 3406(1) cited by the learned counsel for the petitioner is concerned, I am in total agreement with the law laid down by the Apex Court in the said judgement. In the said case, divorce petition was filed by the husband at Bombay and wife was stationed at Jaipur with her small child and therefore, considering the difficulty of the wife to

contest the proceedings at Bombay from time to time, the divorce petition was transferred from Bombay to Family Court at Jaipur. Whereas in the present case, the petitioner-original complainant and the respondent Nos.3 and 4, are ladies, and hence, the said decision is not applicable to the facts of the present case.

8. So far as the decision of 1988 Cri.L.J. 1581 cited by the learned counsel for the petitioner is concerned, I am in total agreement with the law laid down by the Apex Court in the said judgement. Said case is regarding territorial jurisdiction wherein the wife was sent back to her father's house after maltreating her for dowry and wife fallen ill after her return to father's house due to mental shock due to cruelty of husband and his relatives. In that case, the Apex Court has held that the court within whose jurisdiction wife resided with her father had jurisdiction to try the offence as the offence was partly committed outside the Court's jurisdiction when she was maltreated and continued to be committed within court's jurisdiction where she had been left with her father. Whereas the facts of the present case is quite different than the cited case and hence the said citation is also not applicable in this case.

9. In the above peculiar facts and circumstances, I am of the opinion that the present petition is required to be rejected. Hence, it is rejected. Rule is discharged.

10. Trial court is directed to record the oral evidence of the petitioner-original complainant as and when she presented herself before the court.

(R.P.DHOLAKIA, J.)

RAFIK